

**REMARKS**

Applicant respectfully requests reconsideration of the instant application in view of the above amendments and/or the following remarks. Claims 1, 16, 31, 69, 77, 78, and 87 are amended by this action. Support for the amendments may be found throughout the specification. Claims 1-3, 16, 18-31, 33-69, and 71-87 are now pending in this application

**Call with Examiner**

Applicants engaged in a telephone call with the Examiner to discuss the status of the pending application on May 1, 2007. Although no resolution was agreed upon, applicants nevertheless wish to thank the Examiner for his time.

**Pre-Appeal Brief Review**

A Pre-Appeal Brief Request for Review was filed on September 6, 2006 in response to an Office Action issued on June 6, 2006. In the June 6, 2006 Office Action, the Examiner rejected claims 1-3, 16, 18-31, 33-69, and 71-87 under USC § 103(a) as being obvious over DeTore et al. (U.S. Patent No. 4,975,840), Seare et al. (U.S. Patent No. 6,223,164), Dormond et al. (U.S. Patent No. 4,839,822), Hammond et al. (U.S. Patent No. 5,613,072), and Joao (U.S. Patent No. 6,283,761). In response to Applicants' Pre-Appeal Brief Request for Review, the Panel withdrew the June 6, 2006 rejection and reopened prosecution. In accordance with the Panel decision, the pending Office Action was issued on December 18, 2006. In the present action, the Examiner issued an obviousness rejection of claims 1-3, 16, 18-31, 33-69 substantially similar to the June 6, 2006 rejection, but with the Joao reference replaced by David (U.S. Patent No. 5,441,047).

**Rejection Under 35 USC § 112**

Claims 1, 16, 31, 69, 77 and 78 have been rejected under 35 U.S.C. §112, second paragraph, as providing insufficient antecedent basis for particular claim elements. Applicants have amended these claims to correct this issue.

**Rejection Under 35 USC § 103(a)**

Applicants respectfully request reconsideration of the Examiner's rejection of claims 1-3, 16, 18-31, 33-69, and 71-87 under USC § 103(a) in light of the above amendments and/or the following discussion.

In the December 18, 2006 Office Action, the Examiner asserts:

"De Tore, Seare and Dormond do not explicitly disclose at least one said body part from the time of injury over a specific progressive time scale into the future, due to at least one said condition, over time.

However, this feature is known in the art, as evidenced by David. In particular, David suggests at least one said body part from the time of injury over a specific progressive time scale into the future, due to at least one said condition, over time (See David, Col. 13, lines 9-31)."

Applicants respectfully disagree with the Examiner's characterization of David. David generally discloses, "An ambulatory (in the home) patient health monitoring system ... wherein the patient is monitored by a health care worker at a central station, while the patient is in a remote location." (abstract). In conjunction with that system, the cited portion of David discloses the storage of incoming patient data, "...for a given period of time ... so that a physician or health practitioner can go back through the patient's medical data ... and ascertain what the patient's health or condition was at a certain period of time." (col. 13, lines 19-25). In other words, the system of David merely monitors and stores a *historical* record of a particular patient's past medical information. Consequently, David's system does not teach or suggest the element in independent claims 1, 16, 77, or 78, which states, "...profile *estimating a time progression* of a dysfunction level or a capacity of at least one said body part from a time of

injury over a specific *progressive time scale into the future...*" (emphasis added), which requires a projective analysis of a patient's future medical conditions that is in stark contrast to the mere recording disclosed in David. Claim 31 ("...severity value that estimates a time progression of a dysfunction level produced by said transient medical condition on at least one said body part from a time of injury over a specific progressive time scale into the future..."), claim 69 ("...severity value that estimates a time progression of a dysfunction level produced by said transient medical condition on at least one said body part ... arranged in a progressive time line into the future..."), and claim 87 ("...temporally variable dysfunction values indicating the relative affect of the transient medical condition on each of the one or more body parts over a range of times into the future...") all recite elements that are similar to the aforementioned claim elements with respect to surmounting the David reference. Amendments to the claims included in the current response further clarify the connection between the "estimating" action and the time progression of the dysfunction level or capacity. Exemplifying support for these amendments may be found in the specification in descriptions of various embodiments of the invention, such as at p. 2, lines 26-28; p. 7, lines 30-31; p. 8, lines 22-26; and p. 15, lines 12-13. Applicants submit that treating these components of the claim element separately and supplying a separate reference for each is inappropriate, particularly in light of the clarifying amendments.

### **CONCLUSION**

Consequently, the reference(s) cited by the office action do not result in the claimed invention, there was/is no motivation for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed inventions are not admitted to be prior art. Thus, the Applicant respectfully submits that the supporting remarks and claimed inventions, claims 1-3, 16, 18-31, 33-69, and 71-87, all:

overcome all rejections and/or objections as noted in the office action, are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Furthermore, Applicant believes that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art. While many other claim elements were not discussed, Applicant asserts that all such remaining and not discussed claim elements, all, also are distinguished over the prior art and reserves the opportunity to more particularly remark and distinguish such remaining claim elements at a later time should it become necessary. Further, any remarks that were made in response to an Examiner objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to another Examiner objection and/or rejection as to any other claim element(s), any such re-assertion of remarks is not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim elements, and no such commonality is admitted as a consequence of any such re-assertion of remarks. As such, Applicant does not concede that any claim elements have been anticipated and/or rendered obvious by any of the cited reference(s). Accordingly, Applicant respectfully requests allowance, and the reconsideration and withdrawal of the rejection(s) and/or objection(s).

If a telephone conference would facilitate prosecution of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

#### **AUTHORIZATION**

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 03-1240, Order No. 12941-200.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 03-1240, Order No. 12941-200

Respectfully submitted,  
CHADBOURNE & PARKE, L.L.P.

Dated: May 18, 2007

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